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SOUTH FLORIDA
WATER MANAGEMENT DISTRICT

SOUTH FLORIDA WATER MANAGEMENT DISTRICT
3301 GUN CLUB ROAD
WEST PALM BEACH, FLORIDA

IN THE MATTER OF: **Order No. 2007- 406 -DAO-WS**

Rescission of Order No. 2007-107-DAO-WS Imposing Modified Phase III Extreme Water Shortage Restrictions, Rescission of Order No. 2007-100-DAO-WS Imposing Modified Phase II Severe Water Shortage Restrictions, and Imposition of Modified Phase II and Phase III Landscape Irrigation Restrictions for Users Withdrawing Water from the Surficial Aquifer System and the Surface Waters within the Lower East Coast Region, including the Interior Palm Beach County Water Use Basin, Loxahatchee River Water Use Basin, C-18 Water Use Basin, North Palm Beach County Water Use Basin, M-Canal Water Use Basin, Water Conservation Area 1/West Palm Beach Canal Water Use Basin, Water Conservation Area 2 Water Use Basin, Water Conservation Area 3 Water Use Basin, and the South Dade Water Use Basin, and the Water Conservation Areas/Everglades National Park Water Conservation Areas/Everglades National Park Water Use Basin within Martin, Palm Beach, Broward, Miami-Dade, and Monroe Counties

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ORDER RESCINDING RESTRICTIONS AND IMPOSING MODIFIED PHASE II AND MODIFIED PHASE III LANDSCAPE IRRIGATION RESTRICTIONS

The Governing Board of the South Florida Water Management District (hereinafter "District"), after considering recommendations of District staff and being otherwise fully apprised of the matter, enters this Order Rescinding Modified Phase III Extreme Water Shortage Restrictions, Rescinding Modified Phase II Severe Water Shortage Restrictions and Imposing Modified Phase II and Modified Phase III Landscape

Irrigation Restrictions, making the following Findings of Fact and Ultimate Facts and Conclusions of Law.

FINDINGS OF FACT

1. On March 15, 2007, the Governing Board issued Water Shortage Order No. 2007-034-DAO-WS. That order, which became effective on March 22, 2007, imposed modified Phase I Moderate Restrictions, pursuant to Chapter 40E-21, F.A.C., within all of the Lower East Coast Region. Due to intensified water resource concerns, the Governing Board subsequently issued Water Shortage Order No. 2007-056-DAO-WS on April 12, 2007, imposing modified Phase II Severe Restrictions pursuant to Chapter 40E-21, F.A.C. On April 12, 2007, the Governing Board concurred with and clarified that action. On April 23, 2007, the Executive Director of the District issued Order No. 2007-100-DAO-WS, a Modification of Declaration of Emergency Modified Phase II Severe Water Shortage Restrictions (Modifying Order No. 2007-056-DAO-WS). Order No. 2007-100-DAO-WS, which became effective on April 24, 2007, modified Water Shortage Order No. 2007-056-DAO-WS in order to improve consistency, assist compliance reporting for some users and correct scrivener's errors. On May 10, 2007, the Governing Board issued Order No. 2007-107-DAO-WS, imposing Modified Phase III Extreme Water Shortage Restrictions within portions of the Lower East Coast Region particularly described as the Interior Palm Beach County Water Use Basin, Loxahatchee River Water Use Basin, C-18 Water Use Basin, North Palm Beach County Water Use Basin, M-Canal Water Use Basin, Water Conservation Area 1 / West Palm Beach Canal Water Use Basin, Water Conservation Area 2 Water Use Basin, and a portion of Water Conservation Area 3 Water Use Basin. These Basins are within the Lower East Coast Region in Palm Beach and Broward Counties and a portion of Martin County. Copies of

these orders are available at www.sfwmd.gov or from the District Clerk.

2. On April 26, 2007, the Executive Director entered an Emergency Order for the purpose of immediate public water supply relief for the City of West Palm Beach in Palm Beach County. On May 10, 2007, the Governing Board entered Emergency Orders imposing specific water supply related actions concerning public water supply facilities for the Town of Lantana and the City of Lake Worth in Palm Beach County and the City of Hallandale Beach and the City of Dania Beach in Broward County.

3. District staff has continued to monitor the conditions of the water resources and the needs of the water users as required pursuant to Rule 40E-21.221, Florida Administrative Code ("F.A.C.").

4. Since the effective date of Order Nos. 2007-107-DAO-WS and 2007-100-DAO-WS, the water resource concerns described in those Orders have generally improved due, in part, to the beginning of Florida's rainy season. Groundwater levels have rebounded. Levels in the Water Conservation Areas have increased. However, the level of Lake Okeechobee remains significantly below normal with an elevation of 9.05 feet on July 10, 2007.

5. Based upon the data collected for the utilities subject to the public water supply related orders identified in paragraph 2. above, conditions have not improved sufficiently to warrant reducing landscape irrigation restrictions applicable to users within the service areas of those utilities.

ULTIMATE FACTS AND CONCLUSIONS OF LAW

6. Section 373.246, Florida Statutes, authorizes the Governing Board to adopt a water shortage plan to regulate the withdrawal and use of water so as to protect the water resources of the SFWMD.

7. The District's Water Shortage Plan is set forth in Chapter 40E-21, F.A.C. Part II of Chapter 40E-22, F.A.C., establishes the District's Regional Water Shortage Plan for the area affected by this Order.

8. Pursuant to Rule 40E-21.291(4), F.A.C., the Governing Board may modify or rescind a declaration of water shortage restrictions.

9. Although the water resource conditions of the Region are generally improving, continued restriction of landscape irrigation will reduce the demand on the regional system to facilitate recovery from drought conditions.

ORDER

Based upon the above Findings of Fact and Ultimate Facts and Conclusions of Law, it is hereby ordered that:

10. Water Shortage Order No. 2007-107-DAO-WS and Water Shortage Order No. 2007-100-DAO-WS are rescinded effective immediately.

11. All users who were previously subject to Order Nos. 2007-107-DAO-WS and 2007-100-DAO-WS, except those users within the service areas of the utilities identified in paragraph 2. above, shall be subject to the following Modified Phase II Landscape Irrigation restrictions for landscape irrigation only:

A. Landscape Irrigation – New Installation.

(1) For installations which have been in place for 1 to 30 days, and

a. less than 5 irrigated acres in size, water use for irrigation shall be restricted to the hours of 2:00 A.M. to 8:00 A.M., Monday, Tuesday, Wednesday, Thursday, Saturday and Sunday.

b. 5 irrigated acres or greater in size, water use for irrigation shall be restricted to the hours of 12:01 A.M. to 8:00 A.M., Monday, Tuesday, Wednesday,

Thursday, Saturday and Sunday.

(2) For installations which have been in place for 31 to 60 days, and

a. less than 5 irrigated acres in size, water use for irrigation shall be restricted to the hours of 2:00 A.M. to 8:00 A.M., Monday, Tuesday, Wednesday and Thursday.

b. 5 irrigated acres or greater in size, water use for irrigation shall be restricted to the hours of 12:01 A.M. to 8:00 A.M., Monday, Tuesday, Wednesday and Thursday.

(3) Low volume irrigation and low volume hand watering of new landscaping shall be voluntarily reduced.

(4) Cleaning and adjusting of new irrigation systems shall be restricted to 10 minutes per zone on a one time basis.

B. Landscape Irrigation – Existing Installation.

(1) For existing installations less than 5 irrigated acres in size, water use for irrigation shall be restricted to the hours from 4:00 A.M. to 8:00 A.M. for all types of irrigation, except low volume irrigation or otherwise provided in subsection B.(4), and 5:00 P.M. to 7:00 P.M. for low volume hand watering, for two days per week as provided in subsections a. and b. below.

a. Installations with odd addresses shall be permitted to irrigate on Wednesday and Saturday.

b. Installations with even addresses or no address shall be permitted to irrigate on Thursday and Sunday.

c. Installations which irrigate both even and odd addresses, including multi-family units, with existing landscapes less than five irrigated acres in size shall be permitted on Thursday and Sunday and shall be restricted to the hours from 4:00 A.M.

to 8:00 A.M., and 5:00 P.M. to 7:00 P.M. for low volume hand watering. No area may be irrigated more than 2 days per week.

(2) For existing installations 5 irrigated acres or greater in size, water use for irrigation shall be restricted to the hours from 12:01 A.M. to 8:00 A.M. for all types of irrigation, except low volume irrigation or otherwise provided in subsection B.(4).

a. Installations with odd addresses shall be permitted to irrigate on Wednesday and Saturday.

b. Installations with even addresses or no address shall be permitted to irrigate on Thursday and Sunday.

c. Installations which irrigate both even and odd addresses, including multi-family units, with existing landscapes 5 irrigated acres and greater in size, shall be permitted two days per week on Wednesday, Thursday, Saturday or Sunday and shall be restricted to the hours from 12:01 A.M. to 8:00 A.M., and 5:00 P.M. to 7:00 P.M. for low volume hand watering. No area may be irrigated more than 2 days per week

(3) Water use for cleaning, adjusting and repair of existing irrigation systems shall be limited to ten minutes per zone per week.

(4) Low volume irrigation shall be voluntarily reduced. Low volume hand watering of existing landscaping as minimally necessary to prevent plant die off is allowed.

12. All users within the service areas of the utilities identified in paragraph 2. above shall be subject to the following Modified Phase III Landscape Irrigation restrictions for landscape irrigation only:

A. Landscape Irrigation – New Installation.

(1) For installations which have been in place for less than 60 days, and

a. less than 5 irrigated acres in size, water use for irrigation shall be restricted to the hours of 2:00 A.M. to 8:00 A.M., Monday, Wednesday and Saturday.

b. 5 irrigated acres or greater in size, water use for irrigation shall be restricted to the hours of 12:01 A.M. to 8:00 A.M., Monday, Wednesday and Saturday.

(2) Low volume irrigation and low volume hand watering of new landscaping shall be voluntarily reduced.

(3) Cleaning and adjusting of new irrigation systems shall be restricted to 10 minutes per zone on a one time basis.

B. Landscape Irrigation – Existing Installation.

(1) For existing installations less than 5 irrigated acres in size, water use for irrigation shall be restricted to the hours from 4:00 A.M. to 8:00 A.M. for all types of irrigation, except low volume irrigation or otherwise provided in subsection b.(4), and 5:00 P.M. to 7:00 P.M. for low volume hand watering on one day per week being the same day as the irrigation day, as provided in subsections a. and b. below.

a. Installations with odd addresses shall be permitted to irrigate on Saturday.

b. Installations with even addresses or no address shall be permitted to irrigate on Sunday.

c. Installations which irrigate both even and odd addresses, including multi-family units, with existing landscapes less than five irrigated acres in size shall be permitted on Sunday and shall be restricted to the hours from 4:00 A.M. to 8:00 A.M., and 5:00 P.M. to 7:00 P.M. for low volume hand watering on one day per week being the same day as the irrigation day. No area may be irrigated more than 1 day per week.

(2) For existing installations 5 irrigated acres or greater in size, water use for irrigation shall be restricted to the hours from 12:01 A.M. to 8:00 A.M. for all types of

irrigation, except low volume irrigation or otherwise provided in subsection B.(4) and 5:00 P.M. to 7:00 P.M. for low volume hand watering on one day per week being the same day as the irrigation day.

a. Installations with odd addresses shall be permitted to irrigate on Saturday.

b. Installations with even addresses or no address shall be permitted to irrigate on Sunday.

c. Installations which irrigate both even and odd addresses, including multi-family units, with existing landscapes 5 irrigated acres and greater in size, shall be permitted one day per week on Saturday or Sunday and shall be restricted to the hours from 12:01 A.M. to 8:00 A.M., and 5:00 P.M. to 7:00 P.M. for low volume hand watering on one day per week being the same day as the irrigation day. No area may be irrigated more than 1 day per week.

(3) Water use for cleaning, adjusting and repair of existing irrigation systems shall be limited to ten minutes per zone per week.

(4) Low volume irrigation shall be voluntarily reduced. Low volume hand watering of existing landscaping as minimally necessary to prevent plant die off is allowed and restricted to 10 minutes per stressed area, per week, between 5:00 P.M. and 7:00 P.M. Low volume hand watering means watering by one hose attended by one person, fitted with a self-canceling or automatic shutoff nozzle.

13. Variances previously granted from Order Nos. 2007-107-DAO-WS and 2007-100-DAO-WS, if any, shall continue to be effective under this Order.

14. This Order imposing Modified Phase II and Modified Phase III Landscape Irrigation Restrictions shall become effective immediately and shall remain in effect until

modified or rescinded by the Governing Board, or the Executive Director or the Executive Director's designee.

15. A copy of the Notice of Rights is attached as Exhibit A.

DONE AND SO ORDERED at West Palm Beach, Palm Beach County, Florida, on this 11 day of July, 2007.

SOUTH FLORIDA WATER
MANAGEMENT DISTRICT
BY ITS GOVERNING BOARD

ATTEST:

BY: Paula Moree

DATE: 7/11/07

GOVERNING BOARD OF SOUTH FLORIDA WATER MANAGEMENT DISTRICT
STATE OF FLORIDA
SEAL
Established 1949

BY: Sheryl G. Wood
Sheryl G. Wood
General Counsel

LEGAL FORM APPROVED
BY: E. D. Ross

NOTICE OF RIGHTS

As required by Sections 120.569(1), and 120.60(3), Fla. Stat., following is notice of the opportunities which may be available for administrative hearing and/or judicial review when the substantial interests of a party are determined by an agency. Please note that this Notice of Rights is not intended to provide legal advice. Not all the legal proceedings detailed below may be an applicable or appropriate remedy. You may wish to consult an attorney regarding your legal rights.

Right to Request Administrative Hearing

A person whose substantial interests are or may be affected by the South Florida Water Management District's (SFWMD or District) action has the right to request an administrative hearing on that action pursuant to Sections 120.569, 120.57, and 120.60(3), Fla. Stat. Persons seeking a hearing on a District decision which does or may determine their substantial interests shall file a petition for hearing with the District Clerk within 21 days of receipt of written notice of the decision in accordance with Rule 28-106.111, Fla. Admin. Code. Any person who receives written notice of a District decision and fails to file a written request for hearing within 21 days waives the right to request a hearing on that decision as provided by Subsection 28-106.111(4), Fla. Admin. Code.

The Petition must be filed at the Office of the District Clerk of the SFWMD, 3301 Gun Club Road, P.O. Box 24680, West Palm Beach, Florida, 33416, and must comply with the requirements of Rule 28-106.104, Fla. Admin. Code. Filings with the District Clerk may be made by mail, hand-delivery or facsimile. **Filings by e-mail will not be accepted.** A petition for administrative hearing is deemed filed upon receipt during normal business hours by the District Clerk at SFWMD headquarters in West Palm Beach, Florida. Pursuant to Rule 28-106.104, Fla. Admin. Code, any document received by the office of the District Clerk after 5:00 p.m. shall be filed as of 8:00 a.m. on the next regular business day.

- Filings made by mail must include the original and one copy and must be addressed to the Office of the District Clerk, P.O. Box 24680, West Palm Beach, Florida 33416.

- Filings by hand-delivery must also include the original and one copy of the petition. **Delivery of a petition to the District's security desk does <u>not</u> constitute filing. To ensure proper filing, it will be necessary to request the District's security officer to contact the Clerk's office**. An employee of the District's Clerk's office will file the petition and return the extra copy reflecting the date and time of filing.

- Filings by facsimile must be transmitted to the District Clerk's Office at (561) 682-6010. Pursuant to Subsections 28-106.104(7), (8) and (9), Fla. Admin. Code, a party who files a document by facsimile represents that the original physically signed document will be retained by that party for the duration of that proceeding and of any subsequent appeal or subsequent proceeding in that cause. Any party who elects to file any document by facsimile shall be responsible for any delay, disruption, or interruption of the electronic signals and accepts the full risk that the document may not be properly filed with the clerk as a result. The filing date for a document filed by facsimile shall be the date the District Clerk receives the complete document.

The following provisions may be applicable to SFWMD actions in combination with the applicable Uniform Rules of Procedure (Subsections 40E-0.109(1)(a) and 40E-1.511(1)(a), Fla. Admin. Code):

(1)(a) "Receipt of written notice of agency decision" as set forth in Rule 28-106.111, Fla. Admin. Code, means receipt of either written notice through mail or posting that the District has or intends to take final agency action, or publication of notice that the District has or intends to take final agency action.

(b) If notice is published pursuant to Chapter 40E-1, F.A.C., publication shall constitute constructive notice to all persons. Until notice is published, the point of entry to request a formal or informal administrative proceeding shall remain open unless actual notice is received.

(2) If the District's Governing Board takes action which substantially differs from the notice of intended agency decision, the persons who may be substantially affected shall have an additional point of entry pursuant to Rule 28-106.111, Fla. Admin. Code, unless otherwise provided by law. The District Governing Board's action is considered to substantially differ from the notice of intended agency decision when the potential impact on water resources has changed.

(3) Notwithstanding the timeline in Rule 28-106.111, Fla. Admin. Code, intended agency decisions or agency decisions regarding consolidated applications for Environmental Resource Permits and Use of Sovereign Submerged Lands pursuant to Section 373.427, Fla. Stat., shall provide a 14 day point of entry to file petitions for administrative hearing.

Hearings Involving Disputed Issues of Material Fact

The procedure for hearings involving disputed issues of material fact is set forth in Subsection 120.57(1), Fla. Stat., and Rules 28-106.201-.217, Fla. Admin. Code. Petitions involving disputed issues of material fact shall be filed in accordance with Rule 28-106.104, Fla. Admin. Code, and must comply with the requirements set forth in Rule 28-106.201, Fla. Admin. Code.

Hearings Not Involving Disputed Issues of Material Fact

The procedure for hearings not involving disputed issues of material fact is set forth in Subsection 120.57(2), Fla. Stat, and Rules 28-106.301-.307, Fla. Admin. Code. Petitions not involving disputed issues of material fact shall be filed in accordance with Rule 28-106.104, Fla. Admin. Code, and must comply with the requirements set forth in Rule 28-106.301, Fla. Admin. Code.

Mediation

As an alternative remedy under Sections 120.569 and 120.57, Fla. Stat., any person whose substantial interests are or may be affected by the SFWMD's action may choose to pursue mediation. The procedures for pursuing mediation are set forth in Section 120.573, Fla. Stat., and Rules 28-106.111 and 28-106.401-.405, Fla. Admin. Code. Choosing mediation will not adversely affect the rights to a hearing if mediation does not result in a settlement.

DISTRICT COURT OF APPEAL

Pursuant to Sections 120.60(3) and 120.68, Fla. Stat., a party who is adversely affected by final SFWMD action may seek judicial review of the SFWMD's final decision by filing a notice of appeal pursuant to Florida Rule of Appellate Procedure 9.110 in the Fourth District Court of Appeal or in the appellate district where a party resides and filing a second copy of the notice with the SFWMD Clerk within 30 days of rendering of the final SFWMD action.